



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)
c/o David Fendt, Benefit Specialist
Winnebago County DHS
211 N. Commercial Street
Neenah, WI 54956

DECISION

MRA-70/#48333

PRELIMINARY RECITALS

Pursuant to a petition filed March 7, 2001, under Wis. Stat. §49.45(5) to review a decision by the Winnebago County Dept. of Human Services to deny Medical Assistance (MA), a hearing was held on May 24, 2001, at Oshkosh, Wisconsin. A hearing set for April 19, 2001 was rescheduled at the petitioner's request.

The issue for determination is whether petitioner's assets may be allocated to his community spouse.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

(petitioner)
c/o David Fendt, Benefit Specialist
Winnebago County DHS
211 N. Commercial Street
Neenah, WI 54956

Wisconsin Department of Health and Family Services
Division of Health Care Financing
1 West Wilson Street, Room 250
P.O. Box 309
Madison, WI 53707-0309

By: Jean Krings
Winnebago County Dept. Of Human Services
220 Washington Ave.
Oshkosh, WI 54903-2925

EXAMINER:

Brian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (SSN 118-22-5812, CARES #0110914406) is a resident of Winnebago County. He resides in a nursing home; his wife remains in the community.
2. An application for MA was filed on petitioner's behalf on December 6, 2000. After compiling a summary of petitioner's income and assets, the county denied the application on January 25, 2001, because assets were over the limit.
3. As of December, 2000, petitioner's monthly income was \$655 social security. Petitioner's wife's monthly income was \$220 social security and \$390.90 from an annuity. The couple also received \$420 per month from a land contract, \$102.66 from a certificate of deposit, and \$7.48 interest from checking and savings accounts.
4. Total non-exempt assets as determined by the county were \$108,967.50. The county gave petitioner's wife a community spouse allotment of \$54,483.75, added to the \$2,000 MA asset limit, and determined that petitioner was \$52,483.75 over the asset limit.

DISCUSSION

The federal Medicaid Catastrophic Coverage Act of 1988 (MCAA) included extensive changes in state Medicaid (MA) eligibility determinations related to spousal impoverishment. In such cases an "institutionalized spouse" resides in a nursing home or in the community pursuant to MA Waiver eligibility, and that person has a "community spouse" who is not institutionalized or eligible for MA Waiver services. Wis. Stat. §49.455(1).

The MCAA established a new "minimum monthly needs allowance" for the community spouse at a specified percentage of the federal poverty line. This amount is the amount of income considered necessary to maintain the community spouse in the community. After the institutionalized spouse is found eligible, the community spouse may, however, prove through the fair hearing process that he or she has financial need above the "minimum monthly needs allowance" based upon exceptional circumstances resulting in financial duress. Wis. Stat. §49.455(4)(a).

When initially determining whether an institutionalized spouse is eligible for MA, county agencies are required to review the combined assets of the institutionalized spouse and the community spouse. MA Handbook, Appendix 23.4.0. All available assets owned by the couple are to be considered. Homestead property, one vehicle, and anything set aside for burial are exempt from the determination. The couple's total non-exempt assets then are compared to the "asset allowance" to determine eligibility.

The county determined that the current asset allowance for this couple is \$54,483.75. See the MA Handbook, App. 23.4.2, which is based upon Wis. Stat. §49.455(6)(b). \$2,000 (the MA asset limit for the institutionalized individual) is then added to the asset allowance to determine the asset limit under spousal impoverishment policy. If the couple's assets are at or below the determined asset limit, the institutionalized spouse is eligible for MA. If the assets exceed the above amount, as a general rule the spouse is not MA eligible.

As an exception to this general rule, assets above the allowance may be retained as determined through the fair hearing process, if income-producing assets exceeding the asset limit are necessary to raise the community spouse's monthly income to the minimum monthly needs allowance. The minimum monthly maintenance needs allowance in this case was \$1,875 in December, 2000. MA Handbook, Appendix 23.6.0 (5-1-00). As of May 1, 2001, the allowance increased to \$1,935. Handbook, App. 23.6.0 (5-1-01).

Wis. Stat. §49.455(6)(b)3 explains this process, and subsection (8)(d) provides in its pertinent part as follows:

If either spouse establishes at a fair hearing that the community spouse resource allowance determined under sub. (6)(b) without a fair hearing does not generate enough income to raise the community spouse's income to the minimum monthly maintenance needs allowance under sub. (4)(c), the department shall establish an amount to be used under sub. (6)(b)3 that results in a community spouse resource allowance that generates enough income to raise the community spouse's income to the minimum monthly maintenance needs allowance under sub. (4)(c).

Based upon the above, a hearing examiner can override the mandated asset allowance by determining assets in excess of the allowance are necessary to generate income up to the minimum monthly maintenance needs allowance for the community spouse. Therefore, the above provision has been interpreted to grant a hearing examiner the authority to determine an applicant eligible for MA even if a spousal impoverishment application was initially denied based upon the fact the combined assets of the couple exceeded the spousal impoverishment asset limit.

Subsection (8)(d) quoted above includes a final sentence that requires the institutionalized spouse to make his or her income available to the community spouse before the assets are allocated. However, the Wisconsin Court of Appeals, in Blumer v. DHFS, 2000 WI App 150, 237 Wis. 2d 810, __ N.W. 2d __, concluded that the final sentence violated the mandate of the federal MCCA law. The Blumer court held that the hearing examiner first must allocate resources to maximize the community spouse's income, and only if the resources' income does not bring the community spouse's income up to the monthly minimum can the institutionalized spouse's income be allocated. The Blumer decision is on appeal to the United States Supreme Court, but currently it is the law that must be followed.

The result in this case is as follows. Petitioner's wife's sole monthly income is \$610.90. Allocating the joint accounts and the land contract to her adds \$530.14, thus bringing monthly income to \$1,141.04. Since the total is below \$1,875, the result is that all of the couple's non-exempt assets are re-allocated to petitioner's wife. The county then will reallocate some or all of petitioner's sole income to his wife when it determines his monthly cost of care under the MA rules.

CONCLUSIONS OF LAW

All of the non-exempt assets of petitioner and his wife must be allocated to his wife to maximize her monthly income.

NOW, THEREFORE, it is ORDERED

That the matter be remanded to the county with instructions to increase the community spouse asset share to \$108,967.50, and to determine petitioner's MA eligibility retroactive to December 1, 2000, based upon the new community spouse asset allocation. The county shall do so within 10 days of this decision.

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one). The appeal must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of
Madison, Wisconsin, this _____ day
of _____, 2001.

Brian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals
0525/bcs

cc: Winnebago County DHS
DHFS - Susan Wood